

# DMA Medical Opinions

## J. Rice Portfolio Sample

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### Getting Started

#### Course purpose

This resource is designed to provide you with information to aid in your understanding of how to write medical opinions that are sufficient for adjudication purposes. This resource will cover identifying types, purposes, and the basic elements of medical opinions and rationales. It also will describe the required content and language for a medical opinion.

### Medical Opinion and Rationale Overview

In order to write a sufficient medical opinion, you will need to recognize the basic elements that make up a medical opinion; the opinion itself and the supporting rationale. For Compensation and Pension (C&P) purposes, a medical opinion is a conclusion made by an examiner based on the body of current medical knowledge and the evidence of record. Most commonly, you will be asked to provide a medical opinion to help with the following determinations by adjudicators:

- Determine a condition's relationship to an event, injury, illness or disease during a claimant's military service
- Determine relationships between medical conditions
- Determine a condition's etiology
- Reconcile diagnoses

A sufficient medical opinion always includes a well-reasoned, comprehensive supporting rationale. This is the explanation of your thought processes.

#### Audience

The audience for your medical opinion will be VA Rating Staff. Please keep in mind that a medical opinion is one of multiple factors considered in deciding the Veteran's claim. Your medical opinion is a critical part of the overall claims process, but it is not the sole factor for determining entitlement to benefits.

#### Why is a Medical Opinion Needed?

The VA does not need an examination or a medical opinion for every service connection claim. The VA will ask if a medical opinion is needed. Do not offer a medical opinion unless specifically requested. The VA is required to provide an examination and/or a medical opinion when:

- The record contains evidence that the claimant has a current disability
- The record indicates that the disability or signs and symptoms of disability may be associated with active service
- The record does not contain sufficient information to make a decision on the claim

### The Medical Opinion Process

#### Step One: Identify the Questions Presented

A medical opinion is requested by the VA to answer a question related to a claim for benefits. Start by reviewing the instructions and questions posed on the order request. In the following example, the Veteran sustained a neck injury while riding in a truck during service. The VA is requesting an opinion in order to determine whether any current disability is related to the injury sustained during service.

#### Sample Requested Opinion

The Veteran claims service connection for a cervical spine condition with pain and stiffness. Is the Veteran's current cervical spine condition at least as likely as not (50 percent or greater probability) due to or caused by events during military service?

### **Benefit of the Doubt**

Please note that the requestor uses the phrase “at least as likely as not.” This is because a unique standard of proof applies in decisions on claims for Veterans benefits. When there is equivalent evidence both for and against a claim, VA tips the balance in favor of the Veteran. In other words, “the tie goes to the runner.”

For this requested opinion, you have three questions to answer:

- Does the Veteran presently have a diagnosed cervical spine condition?
- Did the Veteran have a diagnosed cervical spine condition at any time since filing his claim for benefits?
- Is it as least as likely as not that the Veteran’s claimed condition is proximately due to (caused by/etiologically related to) an event, illness or injury during service?

### **Step Two: Gather and Review Evidence**

In addition to the order request and the current C&P examination report, you may need to review evidence from the claims file (C-file), to include:

- Previous C&P examinations
- Available medical records
- Lay testimony

You may need to order appropriate testing to provide data for the medical opinion and rationale such as a plain X-ray, PFT’s or an echocardiogram. In addition to these sources, you should review relevant medical literature when applicable. A resource such as UpToDate is completely acceptable.

### **Step Three: Write the Medical Opinion**

Finally, weigh the evidence and draw upon your clinical expertise to provide a medical opinion that incorporates two elements:

- A clear and specific medical opinion, using VBA recommended language
- A comprehensive supporting rationale or reason why for the opinion

## **Writing the Medical Opinion**

You MUST use one of the following legally recognized phrases in your medical opinion:

- If your answer is YES, use: at least as likely as not (50 percent or greater probability)
- If your answer is NO, use: less likely than not (less than a 50 percent probability)

### **The Supporting Rationale: Explain how you came to your conclusion**

A rationale is a summary of your thought process that led to the conclusion expressed in the opinion. The rationale gives a clear, understandable explanation for the decision that was offered and contains these elements:

- A reference to reviewing the C-file and any pertinent records
- Case-specific data reviewed in determining the opinion; typically medical records of examinations
- Cited medical literature, when applicable, to support the opinion

Sample rationale statement with citation:

Scientific literature, including literature from the National Institute of Neurological Disorders and Stroke, indicates that hypertension is by far the most potent risk factor for stroke and causes a two-to-four-fold increase in the risk of stroke before the age of 80. ([http://www.ninds.nih.gov/disorders/stroke/preventing\\_stroke.htm](http://www.ninds.nih.gov/disorders/stroke/preventing_stroke.htm))

Note: Adjudicators would give more weight to an opinion with supporting medical citations than one without.

## **An Unbiased Approach**

The VA's system of claims adjudication is non-adversarial. The VA is obligated to develop the evidence needed to render an informed decision, provided the evidence is obtained in an impartial, unbiased and neutral manner.

The VA is careful to use unbiased language for examination requests. As the examiner, you must be unbiased in your approach. You are expected to review and weigh all available evidence for and against a claim and use your clinical expertise and any pertinent medical literature to formulate and substantiate a medical opinion. A Veteran is allowed to claim anything related to any condition. Your job is to make sure that medically things make sense.

In phrasing a medical opinion, it is essential that you use neutral language that does not suggest a desired outcome. Be impartial and unbiased in answering questions. Examination reports can be sent back for clarification if there is indication of bias, such as addressing only evidence that supports a particular conclusion and ignoring evidence that contradicts that conclusion. It is critical that you address all pertinent evidence and not just the evidence that supports the opinion.

### **Confine Your Opinion to Medical Issues**

Avoid commenting on legal issues such as whether or not VA benefits should be granted, and if so, what disability rating should be assigned as these are not medical issues. Focus on what the VA needs from your medical opinion. Do not give your opinion of the validity of a claim to the Veteran. Remain an objective, neutral examiner at all times.

### **What does the VA need?**

There are four considerations:

- A clear conclusion stated in the language recommended by VBA
- A rationale (documentation of your thought processes) for the conclusion
- All pertinent facts were considered in forming the opinion
- The C-File was reviewed

## **Types of Medical Opinions**

### **Direct Service Connection**

A direct service connection opinion has to do with determining the relationship between a condition and the Veteran's time in service. The purpose is to determine whether a claimed disability had its onset in service or is otherwise related to service due to an event, injury, disease or illness that occurred in service.

Example: Is the Veteran's current diagnosed Asthma condition related to the multiple episodes of wheezing and inhaler use noted in service?

### **Secondary Service Connection**

A secondary service connection opinion concerns disabilities that are proximately due to a previously identified service-connected (SC) condition.

The purpose of a secondary service connection opinion is to determine whether a non-service-connected (NSC) condition is due to an already service connected disability.

Medical opinions may be required to address the relationship between the claimed condition and the SC condition.

Example: Is the left knee DJD caused by the service-connected right knee ACL and meniscus tear?

### **Aggravation of a Preexisting Condition**

This type of opinion addresses whether or not a condition that pre-existed entrance into service was permanently worsened due to events in service.

The purpose of an Aggravation of a Preexisting Condition Opinion is to determine whether the severity of a disorder that existed prior to service entrance was permanently worsened during service and, if so, whether the increase in severity was due to the natural progression of the disease or not. Temporary or intermittent flare-ups of a pre-service condition without

evidence of permanent worsening are not sufficient to warrant a finding of aggravation.

Example: Is the Veteran's pre-existing diagnosis of nasal polyps permanently aggravated by the in-service nasal fracture?

### **Aggravation of a Non-Service Connected Disability**

This type of opinion addresses whether a claimed condition was permanently worsened or "aggravated beyond natural progression" by the SC condition. Certain conditions naturally worsen with time. This would address if that worsening was faster or more severe than expected.

Example: Is the Veteran's non-service-connected Back DJD permanently aggravated by the service-connected right tibia fracture with associated 3-inch leg length discrepancy?

### **Reconciliation of Conflicting Medical Opinions or Diagnoses**

This type of opinion is requested when the VA needs a medical opinion to reconcile multiple conflicting/opposing diagnoses or opinions; one opinion supports the claim, as well as a second opinion that does not support the claim.

### **Specialized Clinician Requirements**

You may not be qualified to render certain opinions because a medical specialist is required for that particular opinion. All vision, hearing, dental and mental health examinations (including specific examinations for PTSD and Eating Disorders) must be conducted by a specialist.

### **When Not to Provide an Opinion**

Never provide an unsolicited opinion. This would be an opinion that is not asked for on an examination or order request. For example, a Veteran claims an increased rating for a previously SC right knee injury but also complains about a left knee condition at the time of the C&P examination. The order request does not ask for a left knee opinion. The order request is for an increase only of the right knee SC condition. Any opinion as to the etiology of the left knee condition would not be valid in the VA's eyes as it was not requested.

Please keep in mind that providing an unsolicited opinion takes more time for you and for VBA, as it may cause an unnecessary delay in the processing of the Veteran's claim.

### **Medical Opinion Examples**

All case studies and example opinions in this course pertain to fictitious claimants and are not intended to reflect the life or situation of any Veterans or Service members, living or deceased.

VA adjudicators are not qualified to make medical determinations. An adjudicator may request a medical opinion regarding direct service connection when there is an indication that a condition may be related to service but there is insufficient evidence showing. The VA's threshold for requesting an opinion that a condition be related to service is, by law, very low.

#### **Example: Direct Service Connection**

Was "condition A" at least as likely as not (50 percent or greater probability) incurred in service; was it caused by an in-service injury, event or illness?

Example: Mr. Dale Willow is a 68-year-old Vietnam Veteran who filed an original direct service connection claim for neck pain. Mr. Willow was a clerk in the U.S. Army from 1968 to 1970 with a deployment to Vietnam. After service, he worked in a construction labor job, but he has since retired.

#### **VBMS Order Request (2507)**

- Mr. Willow is not currently service connected for any disabilities
- Mr. Willow is claiming service connection for neck pain and stiffness
- The VA has requested the examiner to complete the Cervical Spine DBQ and the Medical Opinion DBQ

Requested Medical Opinion: Please determine whether the Veteran's current neck pain and stiffness is at least as likely as not (50 percent or greater probability) due to or caused by events during military service.

State your conclusions using one of the following legally recognized phrases:

\_\_\_\_ is at least as likely as not (50 percent or greater probability) caused by or a result of \_\_\_\_.

\_\_\_\_ is less likely than not (less than 50 percent probability) caused by or a result of \_\_\_\_.

**Claims File (Medical Record) Review**

DD 214:

- Service Dates: 08/06/1968–09/30/1970
- Military Occupational Speciality (MOS): 70A Clerk
- Deployments: Vietnam 09/15/68–09/15/69

Service Treatment Records (STRs):

Entrance Exam, July 1968

- Veteran had a normal entrance exam with no injuries/abnormalities noted

Medical Evaluation, June 1969

- Veteran examined for neck pain after severe motor vehicle accident during mission; no fractures noted and normal C-spine X-ray; treatment consisted of PT and neck collar

Separation Exam, September 1970

- Veteran complained of reduced range of motion and “tightness” in neck muscles

Private Medical Records:

Physician’s Notes, November 1970 to 2008

- Veteran consistently reports neck “stiffness” and limited range of motion to PCP during annual exams

Chiropractic Records, 1985 to 2008

- Veteran began receiving chiropractic care in 1985 for neck pain and routinely visited chiropractor every 3 to 5 months

Lay Evidence, January 2006

- Statement from wife reporting Veteran has difficulty turning head while driving

VA Medical Treatment Record, 2007-2008

- Veteran established care in the VA in 2007 and new evaluation notes show a past history of neck pain, stiffness and headaches for many years since he was discharged from the military. He was regularly taking OTC pain meds for control of headaches and neck pain mostly. Veteran was also prescribed hydrocodone/APAP and cyclobenzaprine during acute episodes of neck pain. On March 3, 2008, Dale Willow was found to have mild tenderness over entire cervical spine and bilateral paraspinal muscles during a visit during flare-up of neck pain. At that visit the Veteran also complained of frequent headaches. No VA or private medical records indicate another neck injury since Mr. Willow was discharged.

Form 21-526, December 2007

- Veteran files a claim for service connection for cervical strain

**Examination Findings:**

- Veteran is overweight to obese
- Veteran has painful, limited ROM of the cervical spine and cervical muscle spasm; tenderness is noted on physical examination, consistent with abnormalities found on in-service examination